

1 Lee J. Danforth, Esq. - SBN 73695
Richard S. Baum, Esq. - SBN 178760
2 **CODDINGTON, HICKS & DANFORTH**
A Professional Corporation, Lawyers
3 555 Twin Dolphin Drive, Suite 300
Redwood City, California 94065-2133
4 Tel. (650) 592-5400
Fax.(650) 592-5027

5 **ATTORNEYS FOR** Defendant
6 **FARMERS INSURANCE EXCHANGE**

7 **IN THE UNITED STATES DISTRICT COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA**

9 CHRISTINE CHANG, individually and as
Guardian ad Litem for ERIC SUN, disabled,

10 Plaintiff,

11 vs.

12 ROCKRIDGE MANOR CONDOMINIUM,
ROCKRIDGE MANOR HOMEOWNERS
13 ASSOCIATION; ROCKRIDGE MANOR
BOARD OF DIRECTORS; ROCKRIDGE
14 MANOR PRESIDENT OF BOARD OF
DIRECTORS CHARLES BLAKENEY;
15 ROCKRIDGE MANOR MANAGER EVA
AMMANN; TRUCK INSURANCE
16 EXCHANGE; AND DOES 1-30, inclusive,
JOINDER

17 UNIVERSITY OF CALIFORNIA
BERKELEY; UC BERKELEY
18 CHANCELLOR ROBERT BIRGENEAU; UC
BERKELEY PUBLIC RECORDS
19 COORDINATOR ALAN KOLLING; UC
BERKELEY GENERAL COUNSEL SUSAN
20 VON SEEBURG; UC BERKELEY POLICE
DEPARTMENT CHIEF VICTORIA
21 HARRISON; UC BERKELEY POLICE
DEPARTMENT LIEUTENANT ALAN
22 TEJADA; UC BERKELEY POLICE
DEPARTMENT MANAGER TOM KLATT;
23 UC BERKELEY POLICE DEPARTMENT
DISPATCHER CONSTANCE PEPPERS
24 CELAYA; and DOES 31-60, inclusive,
JOINDER

25 PAMELA ZIMBA, ATTORNEY AT LAW;
ALBERT COOMBES, ATTORNEY AT
26 LAW; and DOES 61-90, inclusive,

27 Defendants.
28 _____/

Case No.: C07-4005 EMC

DEFENDANT FARMERS INSURANCE
EXCHANGE'S REPLY IN SUPPORT OF
MOTION TO DISMISS PURSUANT TO
F.R.C.P. 12(b)(6) OR, IN THE
ALTERNATIVE, MOTION FOR A MORE
DEFINITE STATEMENT [F.R.C.P. 12(e)]

Date: January 16, 2008

Time: 10:30 a.m.

Dept.: Courtroom C

Judge: Magistrate Judge Edward M. Chen

1 Defendant Farmers Insurance Exchange (hereinafter “Farmers”) respectfully submits the
 2 following reply brief in support of its motion to dismiss or, in the alternative, for a more definite
 3 statement.

4 **I.**

5 **PLAINTIFFS’ CAUSES OF ACTION ARE BARRED BY THE APPLICABLE**
 6 **STATUTES OF LIMITATION**

7 Plaintiffs’ opposition highlights that the matters complained of by plaintiffs occurred more than
 8 two years before the filing of the instant action and, thus, are barred by the two-year statute of
 9 limitations set forth in California Code of Civil Procedure § 335.1. Plaintiffs have no argument to
 10 rebut the position that plaintiffs’ causes of action for civil rights violations, malicious
 11 prosecution/abuse of process, negligence and conspiracy are barred by the applicable statutes of
 12 limitation.

13 **II.**

14 **PLAINTIFFS’ CLAIM OF FRAUD DOES NOT INVOLVE FARMERS**

15 The fraud cause of action is not properly directed towards Farmers as is clear from plaintiffs’
 16 opposition, which argues that they did not discover facts constituting the complained of fraud until
 17 May 18, 2005. However, this alleged fraud relates to plaintiffs’ Case Number 2002046048 entitled
 18 *Chang v. Celaya*. Not only was Farmers not a party to this action, nor was its insured, Rockridge
 19 Manor Homeowner’s Association. Even the most liberal reading of the facts alleged by plaintiffs
 20 cannot support a cause of action for fraud against an entity’s insurer, who was not a party to the
 21 lawsuit complained of by plaintiffs.

22 **III.**

23 **PLAINTIFFS’ COMPLAINT FAILS TO**
 24 **STATE ANY CAUSE OF ACTION AGAINST FARMERS**

25 On its face, plaintiffs’ complaint barely mentions Farmers, and it does not allege an actionable
 26 claim against Farmers. The only mention of Farmers in plaintiffs’ 141-paragraph complaint is found
 27 at ¶ 10, which reads, “The Defendant Truck Insurance Exchange is an insurance company for
 28

1 Rockridge Manor Condominium and Homeowners Association on or about 1996 through present.”
 2 (Complaint at ¶ 10). Plaintiffs’ complaint fails to allege a single fact that would give rise to a cause
 3 of action against Farmers.

4 Only in plaintiffs’ opposition papers is it alleged that plaintiff Christine Chang was a “named
 5 insured” under the Rockridge policy and was in privity of contract with Farmers.¹ There is no
 6 mention of this theory of liability in plaintiffs’ complaint and the court should not consider these
 7 new allegations when ruling upon Farmers’ motion to dismiss. “In determining the propriety of a
 8 Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff’s moving papers,
 9 such as a memorandum in opposition to a defendant’s motion to dismiss.” See *Harrell v. United*
 10 *States*, 13 F.3d 232, 236 (7th Cir. 1993). The focus of any Rule 12(b)(6) dismissal - both in the trial
 11 court and on appeal - is the complaint.” *Schneider v. California Dep’t of Corrections*, 151 F.3d
 12 1194, 1197 (9th Cir. 1998).

13 As the court may not take into account additional facts now asserted in plaintiffs’ opposition,
 14 and plaintiffs’ complaint has clearly failed to provide any facts to support any cause of action
 15 whatsoever, plaintiffs’ complaint must be dismissed in its entirety as to Farmers.

16
 17 ///

18
 19 ///

20
 21 ///

22
 23
 24
 25
 26 ¹ Plaintiffs’ allegation that Christine Chang was a named insured is false. Despite plaintiffs attaching
 27 dozens of exhibits to her opposition, notably absent is a copy of the declarations page or any evidence
 28 supporting her claim she was a named insured or in privity of contract with Farmers. There is no claim that
 Eric Sun was an insured and this action against Farmers should be dismissed in its entirety.

IV.

CONCLUSION

Plaintiffs' 141-paragraph complaint fails to allege any facts that would support a cause of action against Farmers. This court must grant defendant Farmers' motion and dismiss plaintiffs' complaint in its entirety.

Dated: January 2, 2008

CODDINGTON, HICKS & DANFORTH

By: /s/ Richard S. Baum
Richard S. Baum, Esq.
Attorneys for Defendant
Farmers Insurance Exchange